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VIRLYNN TINNELL
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12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF MOHAVE**

14 **STATE OF ARIZONA,**

15 **Plaintiff,**

16 **vs.**

17 **JUSTIN JAMES RECTOR,**

18 **Defendant.**

No. CR-2014-01193

**MOHAVE COUNTY SHERIFF'S
OFFICE'S REPLY TO:**

**Defendant's Response to State's
Request to Accelerate Date (To
Allow Defendant Access to Laptop
in Jail to Review Discovery and
Assist Case Preparation)**

19 COMES NOW attorney James M. Schoppmann, *Special Counsel* to Mohave
20 County Sheriff, and hereby offers the following reply to Defendant's Response to State's
21 Request to Accelerate Date (To Allow Defendant Access to Laptop in Jail to Review
22 Discovery and Assist Case Preparation).

23 The Defendant appears to be doubling down on the notion that 'it's his way or no
24 way' by raising, for the first time, the issue of the Defendant's safety as a reason for the
25 Defendant not availing himself of the current and established procedure which allows
him to review all his electronic data on a computer. Such a stance should not be
entertained - especially when the Defendant's response cites no case law and
misconstrues current circumstances and fact.



S8015CR201401193

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2 All the Defendant has to do (assuming the Jail receives CD/DVDs on his behalf¹)
3 is request time to review electronic data. At that time the Defendant will be taken from
4 his cell or pod to a viewing office in which he will be seated at a computer with
5 headphones and note taking material - outside the presence of other inmates. Pictures
6 of the viewing room are attached herein as **Exhibit "A"**. At the Jail, inmate cells are
7 generally unlocked and open for much of the day and inmates are free to leave their cell
8 and access the main community housing pod area which includes several tables where
9 inmates interact with other inmates in that housing pod. If you take the Defendant's
10 argument to its logical conclusion and the Defendant is allowed to have a laptop and all
11 his CD/DVDs in his possession, he would likely require solitary confinement and/or a
12 personnel security detail, both of which are unwarranted and unreasonable. Ironically,
13 the Jail modified his initial and more restrictive housing assignments at the request of
14 the Defendant who wanted to be in a more general housing setting and there have been
15 little to no issues since that time.

16 Inmates are not allowed to have CD/DVDs in the cell or housing pod. Such items
17 are considered contraband as they can be modified into dangerous instruments and
18 weapons. Jail personnel often search inmates and their property for contraband. Such
19 searches included a general search of the box or envelopes that contain legal mail. The
20 Jail opens and searches incoming legal mail in the presence of the inmate but does not
21 read the legal mail.

22 The Supreme Court spoke on the issue of the inspection of prisoner legal mail in
23 *Wolff v. McDonnell*, 418 U.S. 539 (1974). In *Wolff*, the Supreme Court upheld a
24 detention policy that allowed detention officials to open and inspect—but not read—
25 legal mail sent to an inmate. The Wolff Court stated:

26


¹ As of August 25, 2015 the Jail has still not received any electronic data for the Defendant.
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1 As to the ability to open the mail in the presence of inmates, this could in no way
2 constitute censorship, *since the mail would not be read*. Neither could it chill such
3 communications, *since the inmate's presence insures that prison officials will not*
4 *read the mail*. The possibility that contraband will be enclosed in letters, even
5 those from apparent attorneys, surely warrants prison officials' opening the
6 letters.... [W]e think that petitioners, by acceding to a rule whereby the inmate is
7 present when mail from attorneys is inspected, have done all, and perhaps even
8 more, than the Constitution requires. *Id.* at 577, (emphasis added).

9 The *Wolff* case was discussed by the Ninth Circuit Court of Appeals as recent as 2014
10 in *Nordstrom v. Ryan*, 762 F.3d 903, 908-09 (9th Cir. 2014). Additionally, the Arizona
11 Supreme Court recognizes the *Wolff* case and cited the same in 1983 when holding that
12 prison officials may inspect and examine the communications of inmates without
13 depriving them of their constitutional rights. *State v. Jeffers*, 135 Ariz. 404, 413-14
14 (1983). The *Wolff* case is the seminal case on this issue.

15 The Jail has never harassed or intimidated the Defendant. The Jail has and may
16 in the future search the Defendant and his property, including his legal mail, as allowed
17 by policy and the *Wolff* case. If the Court were to accept the Defendant's premise that
18 Jail personnel could never open incoming legal mail and/or conduct subsequent cursory
19 searches through legal mail material and/or containers containing legal mail, the safety
20 of all inmates, detention officers, and the public would be in jeopardy, as legal mail
21 would become the place in which all contraband was securely hidden by inmates and/or
22 create a possibility that contraband could be introduced, intentionally or unintentionally,
23 into the Jail.

24 RESPECTFULLY SUBMITTED THIS 25th DAY OF JULY, 2015.

25 
26 James M. Schoppmann
Special Counsel to Sheriff

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2 A copy of the foregoing sent this same day to:

3 Honorable Lee F. Jantzen

4 Greg McPhillips, Mohave County Attorney's Office (email)

5 Ron Gilleo, Mohave County Legal Defender's Office (email)

6 Gerald T. Gavin, Attorney for Defendant (email)

7 By JMS

